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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/011,867	12/05/2001	Clifton A. Alferness	1931-7-3	5299

7590

12/23/2003

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EXAMINER

CHATTOPADHYAY, URM

ART UNIT PAPER NUMBER

3738

DATE MAILED: 12/23/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/011,867

Applicant(s)

ALFERNESS ET AL.

Examiner

Urmi Chattopadhyay

Art Unit

3738

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☒ Newly proposed or amended claim(s) 4,5,13,14 and 23-43 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

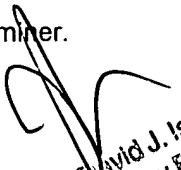
The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 4,5,13,14 and 23-43.

Claim(s) objected to: _____.

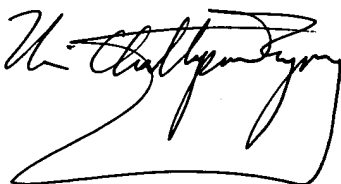
Claim(s) rejected: 1,2,6-11,15-20 and 22.Claim(s) withdrawn from consideration: 3,12 and 21.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


David J. Isabella
Primary Examiner

Continuation of 5. does NOT place the application in condition for allowance because: paragraph [0039] of Liddicoat et al. clearly discloses that the elongate body comprises a plurality of anchors in the form of staples. When the body is positioned within the coronary sinus, the anchors, which includes the proximal-most anchor, are secured to the walls of the coronary sinus. This is shown in Figures 8 and 9. Therefore, with respect to applicant's argument that there is no mention of the proximal end being anchored within the heart, the proximal-most anchor is indeed anchored within the heart, specifically within the coronary sinus. While the examiner agrees that the staples proximal to the most distal staple are being used as guides that guide the cable through the coronary sinus, the staples securing to the walls of the coronary sinus meets the limitation of the proximal-most staple being an anchor that is fixed in or anchored within the heart. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the feature upon which applicant relies (i.e., the proximal anchor must anchor something in addition to itself in order for it to be an anchor) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, it is not required that the proximal staple anchor anything but itself to the heart. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Therefore, it is not required that Langberg et al. include a proximal anchor or a distal anchor for anchoring in the coronary sinus.

URMI CHATOPADHYAY



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